

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SCOTT EDWARD WILLYARD,

Petitioner,

v.

3:07-cr-44
3:11-cv-480

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM

This is a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner was convicted of conspiracy to distribute one hundred kilograms or more of marijuana and sentenced to a term of imprisonment of 180 months by judgment entered October 29, 2010. He filed his § 2255 motion on October 7, 2011. On March 1, 2012, this court granted petitioner's motion for an extension of time to file a notice of appeal; petitioner's letter of December 7, 2010, has been docketed as a notice of appeal. As a result, petitioner has an appeal of his conviction pending in the Sixth Circuit.

Absent extraordinary circumstances, a district court is precluded from entertaining a § 2255 motion while a direct appeal from the same conviction is still pending. *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998). This case presents no extraordinary circumstances compelling district court review at this time. Accordingly, the motion to

vacate, set aside or correct sentence will be **DENIED** and this action **DISMISSED WITHOUT PREJUDICE**.

The court will **CERTIFY** that any appeal from this action would not be taken in good faith and would be totally frivolous. A certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253. The court will **DENY** the petitioner leave to proceed *in forma pauperis* on appeal. *See* Rule 24 of the Federal Rules of Appellate Procedure.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas W. Phillips
United States District Judge